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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman
JAMES M. IRVIN
Commissioner
WILLIAM MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner

IN THE MATTER OF THE QWEST CORPORATION'S COMPLIANCE WITH SECTION 252(e) OF THE TELECOMMUNICATIONS ACT OF 1996.	DOCKET NO. RT-00000F-02-0271
IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271 OF THE TELECOMMUNICATIONS ACT OF 1996.	DOCKET NO. T-00000A-97-0238
ARIZONA CORPORATION COMMISSION, Complainant, v. QWEST CORPORATION, Respondent.	DOCKET NO. T-01051B-02-0871 **QWEST CORPORATION'S NOTICE OF FILING DAVID ZIELGLER'S REBUTTAL TESTIMONY IN SUPPORT OF SETTLEMENT AGREEMENT**

Qwest Corporation ("Qwest') hereby provides notice of filing the attached Rebuttal Testimony of David Ziegler in Support of Settlement Agreement in the above-captioned dockets.

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DATED this 8th day of September, 2003.

FENNEMORE CRAIG, P.C.

By ______________________
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foregoing filed this 8th day of September, 2003:

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Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this 8th day of September, 2003 to:

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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner
WILLIAM MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner

IN THE MATTER QWEST CORPORATION'S COMPLIANCE WITH SECTION 252(e) OF THE TELECOMMUNICATIONS ACT OF 1996	DOCKET NO. RT-00000F-02-0271
IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF THE COMMUNICATIONS ACT OF 1996	DOCKET NO. T-00000A-97-0238
ARIZONA CORPORATION COMMISSION, Complainant, v. QWEST CORPORATION, Respondent.	DOCKET NO. T-01051B-02-0871

DAVID ZIEGLER

REBUTTAL TESTIMONY IN SUPPORT OF PROPOSED SETTLEMENT AGREEMENT

ON BEHALF OF

QWEST CORPORATION

I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is David Ziegler. My business address is 4041 North Central Avenue, Phoenix, Arizona 85012.

II. PURPOSE AND SUMMARY OF TESTIMONY

Q. WHAT IS THE PURPOSE OF QWEST'S REBUTTAL TESTIMONY IN THIS DOCKET?

A. The purpose of my testimony is to support the Proposed Settlement Agreement dated July 25, 2003, between Staff and Qwest (the "Settlement" or "Agreement") and to explain why the Settlement reflects the interests presented by each of the parties to the underlying cases and is a balanced compromise of those interests. I also will address and clarify issues pertaining to the Settlement, which have been raised by witnesses who filed testimony in opposition to the Settlement. Specifically, I will discuss portions of the testimony of AT&T Communication of the Mountain States, Inc and TCG Phoenix ("AT&T"), the Residential Utility Consumer Office ("RUCO"), Mountain Telecommunications, Inc. ("MTI"), and Arizona Dialtone, Inc. ("Arizona Dialtone"). I also will address general comments filed on behalf of WorldCom, Inc. ("WorldCom") and Time Warner Telecom of Arizona LLC ("Time Warner").

III. HISTORY OF SETTLEMENT NEGOTIATIONS

Q. DESCRIBE THE PROCESS LEADING UP TO THE EXECUTION OF THE SETTLEMENT.

A. When Qwest decided it was appropriate to attempt to settle these dockets, it first approached the Commission Staff to determine whether Staff had any interest in settling them. Qwest believed that if Staff was not interested in attempting to reach a settlement, there was no purpose in going further.

Qwest and Staff then engaged in a series of informal discussions (without counsel) that resulted in a list of "deal points" setting forth the very basic concepts behind a possible settlement. Other interested parties were given over 20 days in which to provide input on and participate in the drafting of a final agreement. Staff notified all interested parties of the potential settlement on July 3, 2003. *See* Exhibit DZ-2. The notification included a written summary of agreed-upon principles of settlement and solicited written and oral comments. *Id.* The summary reflected the specific deal points reached between Staff and Qwest, and expressly noted that such points would "continue to evolve" and would be "revised and refined in the process of further negotiations" and the preparation of a draft agreement. *Id.* In addition, Staff conducted two settlement meetings open to all parties in order to receive additional comment and consider any concerns raised by the CLECs and others. The Settlement itself was not finalized and executed until July 25, 2003.

Q. WHY DO YOU BELIEVE THAT NONE OF THE CLECS HAVE JOINED IN THE SETTLEMENT?

A. Generally, the CLECs argue that the Settlement is defective and ignores their interests because none of the CLECs have signed it. However, under the terms of the Settlement, CLECs are not required to execute or support it before the Commission in order to obtain the benefits the Settlement provides to them. That is, the CLECs can receive each of the credits provided in the Settlement without regard to any advocacy position taken in the approval proceedings. The CLECs can oppose the Settlement and seek to increase the level of benefits to them under the Agreement. Once the Agreement is approved, each CLEC, including those who opposed it, can then determine whether or not to accept the Agreement in exchange for a release. Therefore, the CLECs have no economic incentive to support the Agreement. They can adopt a "wait and see" attitude, attempt to expand Settlement benefits to their advantage, and ultimately receive the benefits of the Agreement despite their opposition.

Q. IF THE COMMISSION APPROVES THE SETTLEMENT ARE THE CLECS BOUND BY ITS TERMS EVEN IF THEY DO NOT JOIN IN THE AGREEMENT?

A. The Settlement provides the CLECs with the option of (a) accepting the credits offered under its terms and signing a release; or (b) rejecting the credits and pursuing their claims against Qwest. Nothing in the Settlement requires the CLECs to accept its terms or conditions. The Agreement ends the pending dockets and concludes litigation between Qwest and Staff over the issues raised in these dockets. The CLECs retain the right to reject the credits and pursue whatever claims they might have against Qwest.

It is worthwhile to note that all CLECs, except Eschelon and McLeod, are eligible for credits if they meet the criteria set forth in the Agreement. Therefore, even CLECs that entered into agreements with Qwest that were not filed with the Commission for its approval, will be able to take advantage of the credit provisions of the Settlement.

II. PURPOSE OF THE SETTLEMENT

Q. AT&T COMPARED THE SETTLEMENT AGREEMENT TO SELECTED FILINGS. DO THOSE FILINGS "PROVIDE AN OBJECTIVE MEASURING STICK FOR DETERMINING WHETHER THE SETTLEMENT IS FAIR, REASONABLE, IN THE PUBLIC INTEREST AND SUPPORTED BY THE EVIDENCE"?

A. No, they tell only a small part of the story. The list of eight filings in AT&T's testimony represents, at best, the very tip of a rather large iceberg and leaves out the overwhelming

FENNEMORE CRAIG
PROFESSIONAL CORPORATION
PHOENIX

bulk of the evidence before the Commission in these cases.

Q. DO YOU AGREE WITH AT&T'S CHARACTERIZATION, AT PAGE 4, LINES 25-27 AND AGAIN ON PAGES 7-10, OF STAFF'S FILINGS IN THESE DOCKETS AS "FINDINGS AND CONCLUSIONS" BASED ON THE STAFF'S "INDEPENDENT REVIEW OF THE EVIDENCE?"

A. I have no doubt that Staff conducted an independent review of the materials produced by Qwest in response to discovery requests served in these dockets, as well as discovery and hearing testimony from similar proceedings in other states, and based its filings and litigation positions on the results of that review. That said, Staff's filings are not "findings," because Staff does not function in these (or any other) proceedings as an adjudicator, but rather as an advocate. It is incorrect to argue that Staff's "findings" represent an outcome in these proceedings, and to attack the Settlement as inconsistent with those "findings."

Each of these dockets was vigorously contested. The many parties – Staff, RUCO, CLECs, and Qwest – disagreed on interpretations and applications of the governing law as well as many of the operative facts. In each of these proceedings, Staff appeared and functioned as a *party* that sought, like any other party, to develop a record and make arguments designed to convince the decision maker – first the Administrative Law Judge ("ALJ"), and ultimately the Commission – to make certain rulings and take certain actions. The Settlement represents a negotiated resolution of the many disputed issues in the face of conflicting evidence and legal arguments. To reach this Agreement, Qwest and Staff compromised their respective litigation positions.

Q. BUT AREN'T STAFF'S VIEWS ENTITLED TO CONSIDERABLE REGARD BY THE COMMISSION?

A. Of course they are, but in the appropriate context. In the three underlying dockets, Staff participated as a party – a party charged with pursuing outcomes that it viewed to be in the public interest (as opposed to the specific interest of an individual company or group of companies). When Staff pursues a litigation position, as it did in each of these dockets before the Settlement was reached, Staff does not win outright simply by articulating its view of the public interest – it takes on a burden of proof and the obligation to persuade the ALJ and the Commission that its views are correct.

When, however, Staff negotiates a resolution to a contested proceeding, particularly after all of the evidence and testimony have been received, Staff's judgment about the reasonableness of the settlement under the circumstances of the case is entitled to deference. It means something that Staff participated in all of these proceedings directly, evaluated its position against Qwest's position and the positions of the other participants, weighed the parties' litigation risks and possible outcomes, negotiated with the other parties, and agreed with Qwest that the Agreement currently before the Commission is in the public interest.

AT&T would have the Commission view Staff's litigation position as the rigid benchmark for analyzing the terms of the Settlement, but would ignore Staff's judgment as to the fairness and reasonableness of the Agreement.

Q. AT&T AND OTHER CLECS CRITICIZE THE SETTLEMENT AS "FLAWED BECAUSE IT FAILS TO FOCUS ON ADEQUATELY ADDRESSING THE HARM TO COMPETITION AND THE CLECS." DO YOU AGREE WITH THIS STATEMENT?

A. No, I do not. There is nothing "flawed" about a vigorously negotiated compromise based on judgments associated with the litigation risk of presenting and arguing the many issues raised in the dockets at issue. It is my understanding that both Qwest and Staff engaged in their own assessments of such risks and made settlement offers and counterproposals considering a variety of possible outcomes if these issues continued to be litigated. The Settlement thus reflects a balanced compromise of all of the issues between Staff and Qwest present in the pertinent dockets.

Q. ON PAGE 5 OF ITS TESTIMONY, AT&T ARGUES THAT BECAUSE THE CLECS WERE "EXCLUDED FROM [SETTLEMENT] NEGOTIATIONS" THE AGREEMENT REFLECTS DIFFERENT PRIORITIES AND PRINCIPLES THAN THOSE PREFERRED BY THE CLECS.

A. This statement, in essence, provides support for the fact that the Settlement reflects a fair and reasonable compromise of different "priorities and principles" that are important not just to AT&T, but also to other constituents. For example, in discussing how "[t]his difference in priorities can be readily seen," AT&T points to the voluntary contributions provision contained in the Settlement: "This provision provides no benefit to CLECs. I cannot imagine any CLEC proposing such a provision." Pelto at 5. However, the benefits achieved under the Settlement should not accrue just to the CLECS alone (who are not obligated under the Settlement to pass on the credits they receive to their own customers). Global settlements, such as the one proposed here, must fairly address the interests and concerns of the Commissioners, Staff, RUCO, Qwest, and other CLECs, as well as

Arizona ratepayers. Staff fairly represented all of these interests in negotiating the Settlement.

Q. HOW DO YOU RESPOND TO RUCO'S DESCRIPTION OF THE EVIDENCE PRESENTED IN THE DOCKETS AT ISSUE?

A. Like AT&T, RUCO simply restates its litigation positions and fails to consider all of the interests and risks of the parties in these three cases.

Again, the fairness and propriety of this Settlement must be considered in the context of disputed cases that parties could win or lose outright. It may be that some parties are more confident about ultimate victory than others. But settlements necessarily represent a compromise, with each party making concessions that, on balance, lead to a collectively agreeable resolution, and flow from a judgment that the compromise is better than the possibility of losing. Parties to settlements do not get everything they want – indeed, typically the fairest and most balanced settlements are the ones in which all parties feel unsatisfied. It is not fair to criticize this or any other settlement for failing to meet every demand of every interested or potentially interested party.

Q. WHAT CONCESSIONS HAS QWEST MADE IN THE SETTLEMENT?

A. I addressed the terms of the Agreement in my opening testimony and will not repeat that discussion here. But it is worth reiterating that this Agreement imposes very real financial costs on Qwest and benefits to CLECs and the State of Arizona that are not contingent upon any findings of wrongdoing. Different commentators offer different objections to the financial and non-financial provisions of the settlement – among other things, AT&T, WorldCom, and Arizona Dialtone would amend the Agreement to increase Qwest's financial liability to CLECs, while RUCO would expand the non-monetary concessions to include formal findings of wrongdoing. These differences only highlight the range of special interests across the industry and the sheer impracticability of reaching an agreement that could satisfy all of those interests simultaneously.

III. PROPOSED FINDINGS

Q. BOTH RUCO AND AT&T RECOMMEND THAT THE COMMISSION, AS PART OF ANY ORDER APPROVING THE SETTLEMENT, INCLUDE SPECIFIC FINDINGS THAT QWEST HAS ENGAGED IN ILLEGAL ACTS WITH RESPECT TO THE 252 UNFILED AGREEMENTS DOCKET AND THE 271 SUBDOCKET. WOULD THE INCLUSION OF SUCH FINDINGS IN AN ORDER SIGNIFICANTLY DEPART FROM THE TERMS OF THE AGREEMENT?

A. Yes. The Settlement expressly provides that Qwest denies any wrongdoing, and that the Agreement represents a compromise and settlement of disputed claims that may not be construed for any other purpose. Any findings, such as those sought by RUCO, would significantly vary these terms. The very nature of a settlement is that the parties agree to a resolution without any party admitting the validity of another's claims and/or defenses. The Settlement contains specific commitments from Qwest and provides that a failure to meet those commitments is punishable by contempt. Nothing in the Agreement limits the Commission's ability to address other problems. RUCO and AT&T's notion that Qwest should be forced to admit wrongdoing (or that the Commission could, on its own, create such an admission in this manner) is contrary to the idea of settlement, raises due process concerns, and gives no weight to the important public interest served by settlement.

Qwest would not agree to a settlement that included such findings. Settlements represent a compromise, not a capitulation. To reach a settlement containing findings of wrongdoing, Qwest would have to abandon altogether its legally and factually wellfounded positions. The Settlement is consistent with Arizona's public policy encouraging the resolution of disputes and with the common practice for settlement agreements not to contain or require admissions of liability.

Qwest has agreed to a settlement that requires substantial financial and non-financial commitments. It addresses the alleged harms to CLECs, addresses alleged harms to the Commission and its processes, offers benefits to Arizona consumers, and provides tangible assurances of Qwest's compliance going forward. The Settlement accomplishes these important goals now, without further proceedings or lengthy appeals, and allows the Commission and its Staff to devote its resources to other matters.

IV. ISSUES UNRELATED TO THE UNFILED AGREEMENTS DOCKET, 271 SUBDOCKET, AND THE OSC.

Q. HAVE ANY OF THE PARTIES TO THESE DOCKETS RAISED CONCERNS OR ISSUES THAT FALL OUTSIDE THE SCOPE OF THE DOCKETS?

A. Yes. Arizona Dialtone has filed extensive testimony concerning its unhappiness with Qwest relative to the negotiation and implementation of its interconnection agreement with Qwest and with Qwest's proposed rates for PAL services. AT&T has raised certain issues concerning how Qwest provides DUF files to CLECs. MTI has raised an issue with respect to whether any new transport rates set by the Commission are retroactive to June 2002. None of these issues relates to these three dockets at issue. I will briefly respond to each.

As made clear by Staff at the Commission's procedural conference of August 5, 2003, a hearing on the Settlement is not intended to reopen the floodgates to relitigate the relevant dockets or to raise new complaints that were not the subject of these dockets. The issues raised by Arizona Dialtone are not part of these dockets. Most of Arizona Dialtone's testimony relates to complaints about Qwest's handling of matters under its interconnection agreement with Qwest. These matters can be properly raised in a complaint filed by Arizona Dialtone, and are not relevant to these three dockets at issue.

AT&T complaints concerning the Eschelon workshop and Qwest's provision of Daily Usage Files in the 271 Docket are also are not related to these dockets. AT&T argues that the CLECs should receive the credits related to DUF files on a going-forward basis. This argument is without merit for two reasons. First, the purpose of the credits under the Settlement is to match the credits available to the CLECs with payments allegedly received by Eschelon and McLeod. Second, the DUF issue raised by AT&T has already been resolved in the 271 Docket. While initial tests of the DUF process (performed by CapGemini) or the ROC test (performed by KPMG) evidenced problems, the process of testing and retesting resulted in the fixing of those problems. The Commission entered an order on August 28, 2003 approving Staff's report indicating that Qwest had passed these tests and setting a retest after 271 authority is granted. Additionally, the DUF process is the subject of a PID and Qwest's compliance going forward can be monitored. Qwest will also be subject to payments under the PAP for problems that occur after 271 authority is granted.

The issues raised by MTI concerning the level of transport rates and the effective date of new transport rates are neither a part of nor related to the 252(e) Unfiled Agreements Docket, the 271 Subdocket, or the Order to Show Cause ("OSC"). They are the subject of a separate proceeding that has already been heard, and consequently, will be resolved there. Despite MTI's characterization that its complaints relate to the OSC docket, they do not. The OSC docket dealt with Qwest's delay in implementing wholesale rates.

MTI's concerns relate to the level of the rates implemented and are properly part of the cost docket. In addition, MTI's criticism concerning the sufficiency of the Settlement's proposed penalty, as allocated to the OSC, is incorrect for two reasons. First, Staff proposed a payment of $189,000.00 to the State. Under the Settlement, Qwest has agreed to pay $150,000.00. Second, the monies referred to by MTI are at issue in the other proceeding. If MTI proves its case in that proceeding, it will recover them.

V. CASH PAYMENTS

Q. DO YOU AGREE WITH AT&T'S COMPLAINT (AT PAGE 6) THAT THE "CASH PAYMENT" REQUIRED BY THE SETTLEMENT IS "SIMPLY INADEQUATE TO AMOUNT TO A SERIOUS PENALTY?"

A. The plain terms of the Settlement impose a cash payment on Qwest related to the actions complained of in the 252(e) Unfiled Agreements Docket, the 271 Subdocket, and the Order to Show Cause. It further requires Qwest to make significant monetary contributions in areas that benefit not only Arizona ratepayers, but also CLEC interests, addressing global telecommunications issues such as the provision of service to unserved and underserved parts of Arizona. In addition, Qwest must issue credits to CLECs to resolve the events raised in these dockets, as well as implement procedures and accede to independent monitoring, thereby demonstrating the commitment to compliance and preventing any recurrence. These and other Settlement provisions are specifically designed to promote competition and provide a remedy in response to CLEC complaints.

The Settlement has a total value of over $20 million in cash payments, voluntary contributions, and credits. Under the terms of the Settlement, Qwest will make at least $11.197 million in payments to the State of Arizona and its citizens, exclusive of CLEC credits.

VI. VOLUNTARY CONTRIBUTIONS

Q. AT&T CRITICIZES THE VOLUNTARY CONTRIBUTIONS PROVISION OF THE SETTLEMENT, INCLUDING BROADBAND DEPLOYMENT, AS "INAPPROPRIATELY REDUC[ING] PENALTIES PAYABLE TO THE STATE." ARE THESE CRITICISMS VALID?

A. The CLECs want all of the money to go to them in increased credits or to be taken in an increased cash payment to the State Treasury. The CLECs advance their position that the harm resulting in these related dockets, and from the Settlement itself, is harm to competition and competitors. This ignores the fact that one of the purposes of transitioning to a competitive market is to benefit the Arizona ratepayers. The Settlement appropriately balances the interests of all parties. CLECs benefit through the credit provisions; the State of Arizona benefits through the cash payments made by Qwest to the General Fund; and the ratepayers directly benefit through voluntary contributions made by Qwest in the form of support to community and charitable foundations, consumer education programs, and investment to help meet the telecommunication needs of the State.

Q. THE CLECS RAISE A NUMBER OF CONCERNS ABOUT AN ALLEGED ANTI-COMPETITIVE IMPACT OF THE VOLUNTARY CONTRIBUTIONS OR A PERCEIVED BENEFIT TO QWEST FOR MAKING THESE CONTRIBUTIONS. ARE THEIR CONCERNS VALID?

A. Qwest is obligated under the Settlement to demonstrate to Staff that any investment made pursuant to Paragraph 2 of the Agreement is investment that Qwest would not have otherwise made. Second, and more importantly, the Commission retains control over any investment decisions. The Commission, therefore, has the authority to ensure that no investment is made in an anti-competitive manner and that all such investments are in addition to normal investment that would otherwise have been made. For example, if the Commission approves investment in unserved territory, such investment clearly would be in excess of what Qwest would have otherwise spent because Qwest does not invest in facilities outside of its service territory.

The fair balance of the voluntary contributions provision is evidenced by the different criticisms made by the parties here. Some of the CLECs oppose any voluntary contributions, and especially any investment in broadband facilities. RUCO, on the other hand, in its testimony in the 252(e) hearings, proposed a schedule for broadband deployment throughout the State. Obviously, the Settlement reflects all of the conflicting interests and viewpoints.

Q. AT&T RAISES CONCERNS ABOUT OTHER POTENTIAL BENEFITS TO QWEST FROM THE VOLUNTARY CONTRIBUTIONS. PLEASE COMMENT.

A. AT&T expresses concerns that Qwest will receive public relations benefits and tax deductions to the extent these voluntary contributions are used for charities. However, the Commission, not Qwest, will ultimately approve any charitable contributions. If the Commission chooses not to use any of the money for charitable contributions, there will be none. If the Commission chooses to have some amount contributed to charity, there is nothing inappropriate about the contributions being treated for tax purposes as any other charitable contribution under law.

Q. AT&T REFERS TO THE VOLUNTARY CONTRIBUTIONS AS A "$6 MILLION SLUSH FUND." IS THAT AN ACCURATE CHARACTERIZATION?

A. No. As I have indicated in my previous responses, and as the Agreement plainly states, Staff will have significant participation in the selection of projects, and the Commission ultimately has the final authority to decide how the voluntary contributions may be spent. As indicated in correspondence by Commissioner William Mundell addressing the Settlement, parties should think "outside the box" in attempting to resolve these matters in a manner that serves not only their own interests, but also the interests of the State and its ratepayers.

Q. RUCO HAS ALSO MADE A NUMBER OF CRITICAL COMMENTS CONCERNING THE VOLUNTARY CONTRIBUTIONS PORTION OF THE SETTLEMENT. DO YOU WISH TO RESPOND TO THESE COMMENTS?

A. Yes. RUCO argues that if a portion of the voluntary contributions is used for investment in facilities, Qwest should not be able to include that investment in the rate base and earn a return on the investment. RUCO presents no convincing basis to support its position. Again, the Commission has the discretion to determine what portion, if any, of the voluntary contributions will be invested in facilities. Those facilities will, of necessity, be facilities in which Qwest would not otherwise have invested. Given that fact, there is no reason to treat this investment differently from other investments for return purposes.

RUCO also argues that Qwest should be obligated to commit to a schedule for the deployment of broadband facilities throughout its service territory. I would first note that this suggestion is completely inconsistent with the position taken by AT&T – that none of these monies should be spent on broadband. Further, the Agreement properly balances the interests of all parties, including ratepayers, in arriving at a total settlement. The

Commission has the final authority under the Settlement to determine the use of the $6 million. *If the Commission concludes that some or all of the money should be used for* broadband, it will order it to be used that way.

The Agreement expressly provides that the Commission decides where investment (through voluntary contributions) will be made and that such investment may occur where Qwest would not otherwise have made such investment. It is very likely that the Commission and Staff will only pick those investments where no financial case exists for making such investment, as evidenced by the fact that no other CLECs or ILECs have stepped forward to make the investment voluntarily.

VII. CLEC CREDITS

Q. HAVE YOU READ THE TESTIMONY FILED BY AT&T AND ARIZONA DIALTONE, AND THE COMMENTS FILED BY WORLDCOM AND TIME WARNER TELECOM REGARDING THE CREDITS OFFERED TO CLECS AS PART OF THE PROPOSED SETTLEMENT AGREEMENT?

A. Yes, I have.

Q. DO YOU AGREE WITH THEIR COMMENTS REGARDING THE CREDITS?

A. I do not. While I am not a lawyer, and cannot offer legal opinions, it is my understanding that these credits are included as part of the settlement of a case regarding Qwest's compliance with Section 252. As a result, any remedies are appropriately limited to provisions and terms that Qwest and CLECs were required to file for Commission approval.

Moreover, AT&T, Arizona Dialtone, WorldCom, and Time Warner do not recognize that if the credits in the Settlement are approved, Qwest will have compromised substantial rights and defenses. Most significantly, and as I explain in more detail below, Qwest is agreeing to make certain credits available to Arizona CLECs without requiring them to satisfy related terms and conditions, as they would have been required to if they were opting into the agreements under the 252(i) pick and choose process.

THE 10% CREDIT

Q. IN YOUR TESTIMONY YOU DESCRIBE CERTAIN CREDITS THAT WILL BE OFFERED TO CLECS AS PART OF THE SETTLEMENT. ONE OF THE CREDITS YOU DESCRIBE IS THE 10% CREDIT. WHAT IS THE SCOPE OF THIS CREDIT?

A. This credit will be measured by calculating 10% of a CLEC's purchases of Section 251(b) and (c) services under the Act through their interconnection agreement with Qwest or through Qwest's SGAT over an 18-month period from January 1, 2001 through June 30, 2002.

Q. RUCO, AT&T, TIME WARNER, AND WORLDCOM CRITICIZE THE APPLICATION OF THE CREDIT TO ONLY SECTION 251(B) AND (C) SERVICES. DO YOU AGREE WITH THEIR POSITION?

A. No. The reasoning behind the Settlement is entirely consistent with the Act and the Commission's authority. As I said, the issue in the 252(e) Unfiled Agreements docket was Section 252 compliance, and Section 252(e) does not create a filing obligation with regard to non-251(b) or (c) services.

FENNEMORE CRAIG
PROFESSIONAL CORPORATION
PHOENIX

Moreover, although the Commission has authority to review agreements to determine whether they are in the public interest, that authority is limited to review of interconnection agreements – that is, agreements that create ongoing obligations pertaining to Section 251(b) or (c) services.

Finally, applying the 10% credit only to Section 251(b) and (c) services is a reasonable compromise because Qwest is relinquishing a number of defenses by offering the credit. Most significantly, Qwest is offering the credit without requiring that requesting CLECs be in a similar position and assume the same obligations McLeod and Eschelon did under the subject agreements.

Q. AT&T SUGGESTS THAT STATE LAW PROVIDES A BASIS FOR EXTENDING THE 10% CREDIT TO NON-SECTION 251 SERVICES. WHAT IS QWEST'S POSITION?

A. This is largely a legal matter that can be addressed in post-hearing briefing. However, it is my understanding that there is a sound legal basis for the position adopted in the Settlement.

Q. DOES THE 10% CREDIT AFFORD THE CLECS A SUBSTANTIAL BENEFIT?

A. Yes. Contrary to the assertions of AT&T, the Settlement provides significant benefits to CLECs. First, Qwest is offering credits based upon Section 251 services without also requiring CLECs to assume the same obligations that Eschelon and McLeod assumed in their agreements. For instance, the CLECs will not have to satisfy the significant volume and term commitments contained in the Eschelon and McLeod agreements. Eschelon committed to a volume of $150 million over a term of 5 years, and McLeod committed to a volume of $480 million over a term of 3 years. As stated in my August 14, 2003 testimony, offering this credit without reference to any volume and term commitments for any eligible CLEC represents a very large concession on the part of Qwest.

Q. ON PAGES 16 THROUGH 18 OF ITS TESTIMONY, ARIZONA DIALTONE QUESTIONS WHICH SERVICES ARE 251(B) AND (C) SERVICES. IS THERE ANY GUIDANCE IN STAFF'S OR QWEST'S TESTIMONY AS TO WHAT SERVICES ARE 251(B) AND (C) SERVICES?

A. Yes. On page 9 of Mr. Rowell's testimony, Mr. Rowell specifically delineates the types of services covered by Section 251(b) and (c) of the Act. Mr. Rowell explains that "wholesale services specific to the provision of local service," including UNEs, resale services, and collocation charges, fall within Section 251(b) and (c), while intrastate and interstate access, switched access, special access, and private lines do not. Also, the Act itself provides guidance in Sections 251(b) and (c). If a CLEC purchased out of a tariff, those purchases would not be included in the calculation of the 10% credit. However, if a CLEC purchased a Section 251(b) and (c) services from an interconnection agreement, those purchases would be included in the 10% credit.

Q. WILL QWEST PROVIDE ARIZONA DIALTONE WITH QWEST'S CALCULATION OF THE CREDIT TO WHICH ARIZONA DIALTONE IS ENTITLED?

A. Yes. Qwest will provide that calculation under separate cover, subject to the Commission's rules regarding Arizona Dialtone's certification.

$13/$16 CREDITS

Q. PLEASE BRIEFLY DESCRIBE THE $13 AND $16 UNE-P CREDITS OFFERED TO CLECS IN SECTION 5 OF THE PROPOSED SETTLEMENT.

A. I describe these credits and the basis for offering them in detail in my direct testimony on pages 14 through 16. In short, these credits are based on two agreements between Qwest and Eschelon that resolved a dispute between the parties regarding the accuracy of daily usage files that were provided to Eschelon through a manual process. The daily usage files in turn were used by Eschelon to bill interexchange carriers for all forms of switched access. Mr. Rowell also described the credits in his testimony. I would like to clarify that although Mr. Rowell states on page 12 lines 17-18 that the $13/$16 credits are to be offset by "amounts billed by the CLEC from interexchange carriers for terminating intraLATA toll," in fact the credits are to be offset by amounts billed by the CLEC from interexchange carriers for both terminating and originating toll, including both intraLATA and interLATA toll.

Q. HAVE YOU READ AT&T'S, WORLDCOM'S, AND ARIZONA DIALTONE'S COMMENTS AND TESTIMONY REGARDING THE REQUIREMENT IN THE PROPOSED SETTLEMENT THAT CLECS PROVIDE QWEST WITH CERTAIN DOCUMENTATION IN ORDER TO RECEIVE THE $13/$16 CREDIT?

A. I have. Under the terms of the Settlement, to obtain the credit, a CLEC must submit to Qwest information regarding the months that the CLEC did not receive accurate daily usage information; the reasons it believes the information was inaccurate; the average number of UNE-P lines leased by the CLEC for each relevant month; and the total amount the CLEC actually billed interexchange carriers for switched access in each relevant month. Generally, AT&T, WorldCom, and Arizona Dialtone argue that it will be difficult for CLECs to provide information regarding inaccuracies in their daily usage files and state that Qwest can more easily gather the information.

Q. DO YOU AGREE WITH THEIR COMMENTS AND TESTIMONY?

A. No. Qwest would simply be unable to calculate the amount of any credits owed to CLECs without some mechanism for Qwest to obtain the relevant billing information from the CLECs. As I stated, the $13/$16 per line credits are to be offset by the CLECs' actual billings to IXCs. Otherwise, CLECs would doubly recover access costs – first from the IXC in question and second from Qwest. However, only the CLECs have the documentation of their billings to IXCs. Qwest has never had any access, nor would it under any circumstances, to the switched access billings of any CLEC to an IXC. Without the procedures established in the Settlement, Qwest could not calculate the offset because none of the relevant information is within Qwest's possession or control.

Q. WHAT IS THE RESULT IF A CLEC IS UNABLE TO PROVIDE THE DOCUMENTATION REQUIRED BY THE SETTLEMENT?

A. In the case of the $13/$16 credit, a CLEC that does not provide Qwest with the relevant information is not eligible to receive the credit. This situation is different from the situation regarding the $2 per line per month credit offered in paragraph 4 of the proposed settlement. The $2 credit was based on a settlement agreement with Eschelon regarding Eschelon's termination of Qwest's intraLATA toll to customers served by an Eschelon switch. Like the credit in the Eschelon settlement agreement, the credit offered in the Settlement is offset by any payments a CLEC received from Qwest for the termination of intraLATA toll, because the CLEC has already been compensated to that extent. The Settlement requires CLECs to submit certain information to Qwest to receive the $2 credit. However, unlike the documentation required for the $13/$16 credit, it is possible that Qwest and the CLEC both would have relevant documents. As a result, the

Settlement allows CLECs to receive the credits based on Qwest's documentation if Qwest possesses it, or, if Qwest no longer has relevant records, a CLEC may receive the amount that Qwest actually paid Eschelon each month (which is $0.96 per line per month). This type of compromise is simply not feasible or fair with regard to the $13/$16 credit, where Qwest does not now and never would have had access to the switched access billings of any CLEC to an IXC.

Q. ARE CLECS ELIGIBLE FOR THE CREDIT IF THEY RECEIVED ACCURATE DUF RECORDS FROM QWEST?

A. No. The purpose of the credit offered to Eschelon and the credit in the Settlement is to compensate CLECs for any inaccuracies in their DUF records. Therefore, if a CLEC received accurate records from Qwest, there would be no reason for it to receive the credit. Moreover, if CLECs have not raised concerns regarding their DUF records, do not check the accuracy of their switched access billing, or did not bill interexchange carriers for switched access, there is no reason for them to receive this type of credit. Moreover, the issues raised by Arizona Dialtone regarding conversion to UNE-P during the relevant time period would be more appropriately addressed in a separate proceeding and, as I explain in more detail below, are outside the scope of the Release CLECs are required to execute in order to receive the credits.

Q. IS QWEST MAKING CONCESSIONS BY OFFERING THE $13/$16 CREDIT DESCRIBED IN THE PROPOSED SETTLEMENT?

A. Yes. Eschelon and McLeod, which purchased variations of the UNE-Star platform, received DUF records through a manual process. In contrast, CLECs on the UNE-P platform received DUF records through a mechanized process. Qwest's agreement to pay Eschelon a per-line credit expressly provides that the credits would cease when a mechanized process was in place for the UNE-Star platform. As part of the Settlement, Qwest is not asserting that CLECs must have been receiving DUF records through the manual process in order to be eligible for the credit. Therefore, CLECs who obtained DUF records through a mechanized process and are receiving the credit under the Settlement are in fact receiving more than even Eschelon was entitled to. The Eschelon credit also shows that a $15 million volume commitment was related to the per-line credit. As part of the Settlement, Qwest is also not asserting that CLECs must accept the volume commitment in order to receive the per-line credit. However, CLECs must still show that the DUF records they received, through either the manual or mechanized process, were in fact inaccurate.

Q. ARIZONA DIALTONE PROPOSES MODIFYING THE PROPOSED SETTLEMENT "TO CLARIFY THAT QWEST CANNOT APPLY ANY OF THE CREDITS TO OUTSTANDING BILLS THAT THE CLEC HAS DISPUTED." DO YOU AGREE WITH THAT PROPOSED MODIFICATION?

A. I do not. If a CLEC has any dispute over an outstanding bill, it should resolve that dispute through the dispute resolution process established in the CLEC's interconnection agreement with Qwest or in the SGAT.

<u>TIME PERIOD FOR CREDITS</u>

Q. AT&T, ARIZONA DIALTONE, AND WORLDCOM ARGUE THAT THE 10% CREDIT AND THE PER-LINE CREDITS SHOULD APPLY PROSPECTIVELY RATHER THAN RETROACTIVELY. DO YOU AGREE?

A. No. The purpose of the credit provisions of the Settlement is to provide the other CLECs with the same discounts on 251(b) and (c) services that were allegedly given to Eschelon and McLeod. To do this, the credits should be given for the same time period that

Eschelon and McLeod received the discounts at issue.

Q. IS THERE ANY EVIDENCE IN THE RECORD FROM THE UNFILED AGREEMENTS PROCEEDING TO JUSTIFY PROVIDING ANY CLEC WITH A GOING-FORWARD DISCOUNT OR CREDITS?

A. Not that I am aware of, and the CLECs do not cite any. Qwest has reached legitimate settlement agreements with both McLeod and Eschelon and terminated any alleged discount that each received. Although Arizona Dialtone speculates that the "early termination payments" pursuant to the settlement agreements gave McLeod and Eschelon the benefit of a prospective discount, that speculation is contradicted by McLeod's comments filed with the Commission on April 30, 2003, stating that McLeod had not received the value of a prospective discount.

Q. WORLDCOM, ARIZONA DIALTONE, AND RUCO ALSO COMPLAIN ABOUT THE DURATION OF THE 10% CREDIT IN THE PROPOSED SETTLEMENT AGREEMENT. HOW DO YOU RESPOND TO THOSE COMPLAINTS?

A. WorldCom and Arizona Dialtone suggest that the 10% credit be extended to a 5-year term, and RUCO suggests that the 10% credit be extended to a 3-year period. These suggestions are inconsistent with the duration of the alleged interconnection agreements at issue and any benefits actually received by McLeod or Eschelon, and would be discriminatory if they were implemented. The documents serving as the premise to the alleged discounts for Eschelon and McLeod were in effect for approximately 10-½ months and 18 months, respectively. The 10% credit in the Settlement covers an 18-month period, a term equal to the longest duration of any of the allegedly supporting contracts. Similarly, the per-line credits in the Settlement are offered for the same amount of time Eschelon received those credits. Offering the 10% credit for 18 months would place other

CLECs in the same position as the CLECs who allegedly received a discount on Section 251(b) and (c) services, whereas offering the credit for longer than 18 months or on a prospective basis would place other CLECs in a better position than Eschelon and McLeod for these services, because McLeod and Eschelon are unable to receive such credits. Any allegations of discrimination cannot be cured with discrimination.

Q. AT&T SUGGESTS THAT QWEST HAS OVERESTIMATED THE MINIMUM AND MAXIMUM AMOUNT OF CLEC CREDITS TO BE ISSUED. PLEASE COMMENT.

A. In footnote 5 of its testimony, AT&T states that the Settlement allocates between $8,100,000 and $8,900,000 to the discount credits, whereas in discovery Qwest stated that the value of a 10% credit was between $6,000,000 and $8,000,000. AT&T's characterization of the amount of the credits in the Settlement fails to recognize that any overestimation of the amount of the credits is a significant concession by Qwest rather than a benefit to Qwest. In fact, any overestimation of the amount of the credits in the Settlement gives CLECs a significant benefit by ensuring that the Settlement provides enough money to pay all eligible CLECs. An overestimation of the amounts of the credits also benefits the state of Arizona, because the Settlement provides that any difference between the actual amount paid to CLECs and $8,100,000 will be paid to the State through Voluntary Contributions. Indeed, contrary to AT&T's suggestion, Qwest would have benefited from a lower estimation of the amount of the credits, rather than the higher estimation in the Settlement.

In addition, Paragraph 7 of the Settlement creates a reporting requirement and allows Staff the option of auditing the provision of these credits, should any question or problem arise. The Settlement establishes a specific minimum amount of credits that Qwest must pay in each credit category.

Q. DO YOU AGREE WITH ARIZONA DIALTONE'S SUGGESTION THAT THE CAPS PLACED ON THE TOTAL AMOUNT OF EACH OF THE CLEC CREDITS BE ELIMINATED?

A. No. First, I'd like to respond to Arizona Dialtone's comment that Qwest's projections of the amounts of the credits "are nowhere to be found" in the record. As AT&T pointed out, Qwest calculated the amount of the 10% credit in Section 3 of the Settlement and provided that information in response to a discovery request from AT&T. That discovery response is attached as Exhibit DZ-3 to my testimony. Second, as I discussed above, the amount of the 10% credit in the Settlement is an overestimate. Therefore, Arizona Dialtone's concerns that the caps will prevent CLECs from recovering credits is unwarranted. Finally, the caps serve the legitimate purpose of clarifying the extent of Qwest's concessions and obligations under the Settlement.

Q. SEVERAL CLECS HAVE SUGGESTED THAT THE CREDITS UNDER PARAGRAPHS 3, 4, AND 5 OF THE AGREEMENT SHOULD BE PAID TO THE CLECS IN THE FORM OF CASH RATHER THAN CREDITS ON THEIR PRESENT OR FUTURE BILLS. WHAT IS YOUR RESPONSE TO THAT SUGGESTION?

A. Bill credits are a regularly used form of payment between carriers to customers. For example, Section 10 of the Arizona QPAP provides that tier one payments that are made to the CLECs are paid in the form of bill credits. Further, bill credits are the standard form of payment in the industry when an ongoing relationship exists between carriers, and remains the lowest costs, most efficient means of providing a refund. The only circumstances where a cash payment is appropriate instead of a bill credit is where the carrier no longer does business with Qwest and has no bill to credit.

Q. HOW DO YOU RESPOND TO TIME WARNER'S CONTENTION THAT CLECS SHOULD RECEIVE INTEREST FOR CREDITS OR DISCOUNTS RECEIVED UNDER THE PROPOSED SETTLEMENT?

A. I disagree. This is a matter more appropriately reserved for legal briefing, but it is Qwest's position that providing interest for credits or discounts received under the Settlement is similar to prejudgment interest in the litigation context, which is rarely awarded under Arizona law.

Q. MTI STATES THAT THE SETTLEMENT WOULD NOT COMPENSATE MTI FOR ITS LOSS OF MCLEOD AS A CUSTOMER. IS THIS A REASON TO REJECT THE SETTLEMENT?

A. No. MTI states that at one time it sold services to McLeod and subsequently lost McLeod as a customer. MTI's competition with Qwest in the *wholesale* market for wholesale customers such as McLeod has nothing to do with the allegations in the 252(e) Unfiled Agreements proceedings that Qwest was not offering the same provisions to CLECs in addition to McLeod.

VIII. SCOPE OF THE RELEASE

Q. IN ORDER TO RECEIVE THE CREDITS UNDER THE SETTLEMENT, CLECS ARE REQUIRED TO EXECUTE A RELEASE OF CERTAIN CLAIMS. WOULD CLECS BE REQUIRED TO RELEASE CLAIMS REGARDING INTERSTATE SERVICE?

A. No. The Settlement states that in order to receive the credits, a CLEC must execute a "release of any and all claims of the CLEC and its affiliates, subsidiaries, and parents against Qwest, arising out of any of the agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket)." The docket numbers are the numbers for the 252(e) Unfiled Agreements proceeding. Only issues regarding intrastate services that begin and terminate in Arizona would be subject to the release.

Q. CAN YOU FURTHER CLARIFY THE SCOPE OF THE RELEASE IN RESPONSE TO CLECS' CONCERNS?

A. In many cases, the CLECs' comments about the scope of the release are merely a restatement of their comments about the credits that they receive under Paragraphs 3 and 5 of the Agreement. I have already responded to those arguments previously.

The Settlement does not require the CLECs to release any claims unrelated to the issues in the 252(e) Unfiled Agreements Docket and the 271 Subdocket. The release also does not require the CLECs to release any claims they may have relating to the purchase of interstate services. As a particular example, Arizona Dialtone may sign a release, accept credits, and still raise claims it may have under its interconnection agreement with respect to untimely conversion of unbundled network elements. And as another example, if a CLEC signs the release and accepts the credits, it cannot assert any claims based on the alleged agreements between Qwest, Eschelon, and McLeod.

Q. IS REQUIRING CLECS TO EXECUTE A RELEASE IN EXCHANGE FOR THE CREDITS A REASONABLE REQUIREMENT?

A. It is. First, I would like to point out that CLECs are free not to sign the release, not receive the credits under the Settlement, and pursue their own claims independently. Accordingly, CLECs that believe the release is too broad are not obligated to execute it.

That said, the terms of the release are a reasonable compromise. Qwest is relinquishing a number of defenses by offering the credits in the Settlement. Most prominently, Qwest is offering the credits without requiring that requesting CLECs be in a similar position and assume the same obligations as the CLEC did under the subject Agreement. Qwest is also offering the $2 per line credit for compensation for intraLATA toll despite Qwest's position that intraLATA toll is not a Section 251(b) or (c) service, is outside the types of provisions that would require filing under Section 252(e), and is outside the scope of CLECs' opt-in rights under Section 252(i). The credits represent a compromise and significant concessions by Qwest, and the release requirement is a reasonable restriction.

Q. PLEASE ADDRESS AT&T'S "CONCERNS" WITH THE SETTLEMENT'S PROVISION FOR THE DISMISSAL OF LITIGATION APPEARING ON PAGE 22 OF ITS TESTIMONY.

A. On its face, the Settlement only terminates litigation between Staff and Qwest. The plain terms of the Settlement permit CLECs the option of voluntarily receiving the benefits of the Settlement in exchange for a release, or rejecting the CLEC credits provided for in the Settlement and pursuing their own claims.

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IX. IMPLEMENTATION OF WHOLESALE RATES

Q. AT&T CRITICIZES THE COMPROMISE REACHED BETWEEN STAFF AND QWEST ON THE PERIOD ALLOWED FOR THE IMPLEMENTATION OF WHOLESALE RATE CHANGES. WOULD YOU PLEASE RESPOND TO THIS COMMENT?

A. The provision AT&T criticizes represents a reasonable settlement between Staff's position and Qwest's position. In the OSC docket, Staff recommended that Qwest be required to implement wholesale rates within 30 days of entry of a Commission order. Qwest argued that a reasonable period for implementation of wholesale rates was 90 days. In the Settlement, Staff and Qwest compromised on a deadline of 60 days after the entry of a Commission order fixing specific, numeric rates to be implemented.

AT&T criticizes this compromise on two grounds. First, AT&T contends that the Settlement does not provide parity between the implementation of wholesale rates and retail rates. This issue was discussed at length in the OSC hearing, and Qwest's position is that there is no parity requirement under the Act for the reasons set forth in its closing brief. Second, AT&T complains that Staff moved off its litigation position of 30 days. From Qwest's view, it represents a reasonable settlement between the litigation positions of the two parties.

CONCLUSION

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
MARC SPITZER, CHAIRMAN
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

IN THE MATTER OF QWEST CORPORATION'S COMPLIANCE WITH SECTION 252(e) OF THE TELECOMMUNICATIONS ACT OF 1996	)	DOCKET NO. RT-00000F-02-0271
IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF THE COMMUNICATIONS ACT OF 1996	)	DOCKET NO T-00000A-97-0238
ARIZONA CORPORATION COMMISSION, *Complainant*, V QWEST CORPORATION, Respondent.	)	DOCKET NO. T-01051B-02-0871
STATE OF ARIZONA COUNTY OF MARICOPA	)	AFFIDAVIT OF DAVID ZIEGLER

David Ziegler, of lawful age being first duly sworn, deposes and states:

1. My name is David Ziegler. I am Assistant Vice President – Arizona Public Policy. I have caused to be filed written rebuttal testimony in support of Qwest Corporation in Docket No. RT-00000F-02-0271/T-00000A-97-0238/T-01051B-02-0871.

2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.

David Ziegler

SUBSCRIBED AND SWORN to before me this 8th day of September, 2003.

Josie Maldonado

Notary Public residing at
Phoenix, Arizona

My Commission Expires: 9/18/04

"OFFICIAL SEAL"
Josie Maldonado
Notary Public-Arizona
Maricopa County
My Commission Expires 9/18/2004

EXHIBIT
DZ-2

From: Maureen Scott [MScott@CC.STATE.AZ.US]
Sent: Thursday, July 03, 2003 2:52 PM
To: rwolters@att.com; dpozefsky@azruco.com; hpliskin@covad.com; klclauson@eschelon.com; DWYER, THERESA; thc@lrlaw.com; dconn@mcleodusa.com; mpatten@rhd-law.com; thomas.f.dixon@wcom.com
Cc: CKempley@CC.STATE.AZ.US; EGJ@CC.STATE.AZ.US; EOA@CC.STATE.AZ.US; BERG, TIM; acrain@qwest.com
Subject: Principles of Settlement - Qwest Enforcement Dockets

SETTLE~1.DOC Maureen Scott.vcf

The Staff of the Arizona Corporation Commission and Qwest Corporation are providing you with the attached summary of points of 'Settlement Proposal for 252(e) Unfiled Agreements, 271 Subdocket, Wholesale Cost Implementation Order to Show Cause, and Withdarwal of Cost Docket Appeal. Pursuant to Rule 408 of the Arizona Rules of Evidence, any use of this document or the information contained in it is subject to the restrictions and limitations set forth in that Rule. This summary reflects the general subjects of the deal points between Staff and Qwest. Those deal points may continue to evolve, and to be revised and refined, in the process of further negotiations and documentation of the settlement. Please provide any comments you have on the points set forth in the Attachment to Maureen Scott by 5:00 pm on Tuesday, July 8, 2003.

Maureen A. Scott
Attorney, Legal Division
Arizona Corporation Commission
(602) 542-6022 Telephone
(602) 542-4870 Facsimile
maureenscott@cc.state.az.us

Settlement Proposal for 252 (e) Unfiled Agreements, 271 Subdocket, Wholesale Cost Implementation Order to Show Cause, and Withdrawal of Cost Docket Appeal

1.	252 (e) /271 Subdocket (Eschelon and McLeod agreements	$5M
	252 (e) failure to file other agreements	$0.047M
	Order to Show Cause Cost Docket Implementation	$0.150M
	Subtotal	**$5.197M**
2.	Voluntary Contribution	**$6M**

- Education
- Economic Development
- Infrastructure Investment

3. Issuance of credits off of future purchases equaling 10% of actual purchases of Section 251(b) and (c) services for the period of 1/01/01 – 6/30/02.

   $8.1M (Min)
   $8.91M (Max)

4. Credit of $2 per month per CLEC access line, offset by actual CLEC collections from Qwest for terminating intraLATA traffic for eight months (July, 2001 through February, 2002). CLECs must provide documentation showing collections.

   $.6 M (Min)
   $.66M (Max)

5. Credit of $13 for eight months from November, 2000 through June, 2001, and $16 per month for eight months from July, 2001 through February, 2002 per UNE –P purchase, offset by actual CLEC per line billings to IXCs for switched access. CLECs must provide documentation showing billings to IXCs.

   $.5M (Min)
   $.55M (Max)

6. Withdraw Federal lawsuit regarding wholesale cost docket

TOTAL **$20.397M (Min)**
$21.317M (Max)

Any amounts less than the minimum in #3-5 will be added to #2. Amounts for #3-5 are capped at the maximum amount. If a CLEC determines not to receive credits through this plan, then amounts attributable to such CLECs are deducted from the amounts. CLECs receiving credits shall execute release of claims.

7. Independent monitor of Qwest's Section 252(e) compliance
   - Hire and pay for an independent auditor to monitor the work of Qwest's Agreement Review Committee annually for the less of either a three year period or the ACC authorizes termination of auditor.

8. *Continue the existing Qwest 252 compliance training for a period of three years.*

9. Implement and abide by the 252 related assurances contained in Qwest's December 23, 2002, filing.

10. Develop systems enabling wholesale rate implementation within [to be negotiated] days of ACC decision.

11. Hire and pay for independent consultant monitor of Qwest's implementation process for wholesale rates.

12. CLECs can opt into non-monetary provisions pertaining to Section 251 services for the 28 agreements at issue, even terminated agreements and provisions, if the CLECs qualify by agreeing to all related terms under the requisites of Section 252(i).

13. Qwest agrees to address in a settlement stipulation that the company should have promptly and explicitly informed the ACC and its staff of the timeframes associated with the implementation of phase II Order wholesales rates changes and agrees to promptly provide such information on all future occasions, including requesting a waiver as appropriate.

14. Modified its Communications process for CLEC to require correspondence to all wholesale customers at critical process points. This will include the following:
    - Immediately after the issuance of a final Commission Order
    - Immediately after a rate sheets are updated
    - Immediately prior to the introduction of new Commission approved rates to wholesale customers bill.

15. Continue the Qwest Cost Docket Governance team already established by Qwest for a three year period.

EXHIBIT
DZ-3

Arizona
RT-00000F-02-0271
ATT/TCG 05-001

INTERVENOR: AT&T Communications of the Mountain States, Inc. and TCG Phoenix

REQUEST NO: 001

In the Settlement Agreement a minimum of $8,100,000 and a maximum of $8,900,000 is allocated to the discount credits for Eligible CLECs for Section 251(b) and (c) services.

a. Disregarding the maximum allocation provided for in the Settlement Agreement, provided for in the Settlement Agreement, provide the maximum amount Qwest would have to pay in discount credits to all Eligible CLECs for the period of January 1, 2001, through June 30, 2002, if Section 3 Discount Credits includes only Section 251 (b) and (c) services.

b. Disregarding the maximum allocation provided for in the Settlement Agreement, provide the maximum amount Qwest would have to pay in discount credits to all Eligible CLECs for the period of January 1, 2001, through June 30, 2002, if Section 3 Discount Credits includes Section 251(b) and (c) services and all intrastate services purchased by Eligible CLECs.

c. Disregarding the maximum allocation provided for in the Settlement Agreement, provide the maximum amount Qwest would have to pay in discount credits to all Eligible CLECs for the period of January 1, 2001, through June 30, 2002, if Section 3 Discount Credits includes Section 251(b) and (c) services and all intrastate services and all interstate services purchased by Eligible CLECs.

RESPONSE:

1.a If Section 3 Discount Credits include only Section 251 (b) and (c) services, Qwest estimates the payment to eligible CLECs to between $6M and $8M.

1.b If Section 3 Discount Credits include only Section 251 (b) and (c) services and all Intrastate services, Qwest estimates the payment to eligible CLECs to be between $12M and $14M.

1.c Qwest objects on the grounds that this request is not reasonably calculated to lead to discovery of admissible evidence because the requested information pertains to services outside the jurisdictional scope of the Arizona Corporation Commission.

Qwest is continuing it efforts to refine these figures further.

Respondent: Arturo Ibarra